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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/036,157      | 12/26/2001  | Tomasz A. Matraszek  | 83837RLO            | 3986             |

7590 02/12/2007  
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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2624

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 02/12/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/036,157

Applicant(s)

MATRASZEK ET AL.

Examiner

Greg F. Cunningham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-7,9-12,27 and 29-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9-12,27 and 29-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is responsive to communications of amendment received 11/30/2006.
2. The disposition of the claims is as follows: claims 1, 2, 4-7, 9-12, 27 and 29-37 are pending in the application. Claims 1, 7, 29 and 37 are independent claims. Claims 2, 8, 13-26 and 28 have been cancelled. Claim 37 is newly added.
3. The group and/or Art Unit location of your application has changed. To aid in the correlation of any papers for this application, all further correspondence should be directed to Group Art Unit 2624 (effective 02/07). Please be sure to use the most current art unit number on all correspondence to help us route your case and respond to you in a timely fashion.

### *Claim Rejections - 35 USC § 101*

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1, 2, 4-7, 9-12, 27 and 29-37 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A. Claim 1 recites, "An image file for storing a digital image and information related to the digital image", while claim 29 recites, "A collection of image files wherein each stores a different digital image and information related to such digital images, each image file including", and while claim 37 recites "A storage device that stores the image file of claim 1", however, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory

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processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program’s functionality to be realized. (See: “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”, pages 50-53.)

Furthermore, nonfunctional descriptive material that does not constitute a statutory process, machine, manufacture or composition of matter and should be rejected under 35 U.S.C. § 101. Certain types of descriptive material, such as music, literature, art, photographs and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture or composition of matter. (See: “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”, page 54.)

B. Both claims 1 and 29 claim “affective information which relates to the feelings or emotions of the user”, which constitutes non-functional descriptive material.

When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored in a computer-readable medium, in a computer, on an electromagnetic carrier signal does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”). Such a result would exalt form over substance. In *re Sarkar*, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978) (“[E]ach

invention must be evaluated as claimed; yet semantogenic considerations preclude a determination based solely on words appearing in the claims. In the final analysis under § 101, the claimed invention, as a whole, must be evaluated for what it is.”) (quoted with approval in *Abele*, 684 F.2d at 907, 214 USPQ at 687). See also *In re Johnson*, 589 F.2d 1070, 1077, 200 USPQ 199, 206 (CCPA 1978) (“form of the claim is often an exercise in drafting”). Thus, nonstatutory music is not a computer component and it does not become statutory by merely recording it on a compact disk. Protection for this type of work is provided under the copyright law.

When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory and should be rejected under 35 U.S.C. § 101. (See: “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility”, pages 50-52.)

**Examiner’s Note:**

A. Recommend amending independent claim 1 preamble to read as “A computer readable medium encoded with an image file for storing a digital image and information related to the digital image, including:”

B. Recommend amending independent claim 29 preamble to read as “A computer readable medium encoded with a collection of image files wherein each stores a different digital image and information related to such digital images, each image file including:”

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 6-7, 9-12, 27 and 29 are rejected under 35 U.S.C. 102(e) as being disclosed by Shepard et al. (US 2003/0191682 A1), hereinafter Shepard, and further in view of Microsoft Press Computer Dictionary, hereinafter Microsoft Dictionary.

A. Shepard discloses claim 1, "An image file for storing a digital image and information related to the digital image [(para. 0054) at: Positioning system 118 provides a database that includes a media library and information related to each media within the media library. The media defines the format in which information is captured and populates the database.], including:

a) digital image data [(para. 0054) at: For example, in one embodiment, the storage device 106 may include a database of still images, video clips, sound clips, virtual reality clips and the like. The information used by positioning system 118 may also be stored as a sequence of bits or information, configured to trigger output devices designed to output or current information. These output devices may include, but not be limited to, those that generate smells, synthesize sounds and produce sensations of taste. Virtual reality output devices are currently being developed by companies such as DIGITAL TECH FRONTIERS that allow users to view, hear and feel the experience of driving a car.

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(para. 0055) at: Also, information from a variety of input devices may be presented or input into the computer and converted to the appropriate format for storage in the database.];

b) a user identifier that identifies a particular user [(para 0050) at: In other words, positioning system 118 may be used for creating an ownable identity for a product or company around a set of defined perceptions.

(para 0052) at: By using positioning system 118, a company can quickly react to market situations, shorten the development cycle of marketing and product design programs, and identify demographic, psychographic and technographic trends.

(para. 0076) at: 'system 118 will display a scale 1302 based on the desired perception and its opposite. In one such example, the opposite is "remote and insincere" and the desired perception is "genuine and approachable." Users may then be asked to rank the company that is attempting to position its image or perception against its competitors along the same scale. This **ranking** will **identify** whether the perceptions they wish to own are indeed ownable with their **particular target audience**. For instance, if a competitor ranks high on a particular desired perception it may indicate that it will be difficult to own that perception.', wherein ranking corresponds to a user identifier for a group or at least one user.

(para. 0099) at: When providing positioning system 118 across a network, positioning system 118 stores information about users who may be polled (e.g., via a virtual focus group). The information may be stored in one of the databases 2306. Positioning system 118 may search the stored information to identify users who should be polled about particular products or companies. Positioning system 118 can also automatically invite the identified users to participate in a poll.]; and

c) data representing affective information which relates to the feelings or emotions of the particular user identified by the user identifier toward the digital image stored in the image tile [(para. 0050) at: In one embodiment, a company wanting to create a particular image of being "fun and exciting," for example, may use positioning system 118 for collecting information about what users think is "fun and exciting." Then, positioning system 118 can analyze and process the collected information and provide averages of how consumers rank a particular image, for example. Positioning system 118 can also output or present a desired perception. For example, an image or perception of being "fun and exciting" may be output or presented to consumers in a variety of formats such as visual, auditory, olfactory, taste, tactile and experiential.

(para. 0051) at: Positioning system 118 distills signals and messages that are sent by specific visual, auditory, olfactory, taste, tactile, experiential and other sensory perceivable cues. This enables the user to deliver a more precise translation of a desired message or positioning (e.g., image or perception) for a particular brand or product in the marketplace.],

wherein the affective information includes a quantitative value [(para. 0051) at: Positioning system 118 provides qualitative and quantitative information to its users. The information is collected and processed using computers and is consequently much more efficient than human researchers. Moreover, positioning system 118 adds a degree of depth to the information gathered by processing the collected information and analyzing details such as color, composition, tone and context to discover information that is not discernible to human researchers.]



which is an importance rating of the digital image [(para. 0012) at: There is a need for an improved technique to assist a company in managing its perceptions in today's competitive marketplace, to differentiate itself from its competitors and to communicate a meaningful proposition of its products to consumers. There is also a need for a positioning system that provides a set of tools to evaluate the position that a company or brand wishes to own, such as "reliable." Such positioning system then helps to uncover the "ownability" of that position in the market, refine its current position or craft a new position that is "ownable" in the market and true to the values of the company's vision. Furthermore, once an "ownable" position is obtained, there is a need to build a vocabulary of cues (visual, auditory, olfactory, taste, tactile and experiential) that can be used to accurately translate the chosen position at each point of contact with consumers.

(para. 0076) positioning system 118 will display a scale 1302 based on the desired perception and its opposite. In one such example, the opposite is "remote and insincere" and the desired perception is "genuine and approachable." Users may then be asked to rank the company that is attempting to position its image or perception against its competitors along the same scale. This ranking will identify whether the perceptions they wish to own are indeed ownable with their particular target audience. For instance, if a competitor ranks high on a particular desired perception it may indicate that it will be difficult to own that perception; wherein perception, insincere and/or genuine and approachable correspond to feelings or emotion, while displayed scale 1302 corresponds to data representing affective information.

(para. 0120) at: Referring to FIGS. 15-20, classification information of the outputted particular visual representations 2338 is rated and the ratings are then processed to determine an

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average rating 2352 for each outputted visual representation 2338. Also, the ratings of the classification information may be processed to identify a ranking of one or more of the outputted visual representations 2338.]” [as detailed] and wherein [meaningful proposition] corresponds to “importance”, which communicates via [vocabulary of cues (visual, ...) such that [outputted particular visual representations are rated and processed to identify a ranking] corresponds to “importance rating of the digital image”.

Shepard in [(para. 0111) illustrates how the specific sensory stimuli representations being tested are imported into the file] corresponds to individual perception of visual representations are stored in the same image file as the visual representation.

Furthermore Shepard indicates that the image and related information are stored in a database. Microsoft Dictionary teaches on p. 129 that ‘database’ is “a file composed of records, each containing fields together with a set of operations for searching sorting, recombining and other functions.”

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to store still images, video clips, sound clips, virtual reality clips and the like in a database disclosed by Shepard in combination with database is a file disclosed by Microsoft dictionary, and motivated to combine the teachings because they are related fields of endeavor.

B. Shepard and Microsoft Dictionary disclose claim 6, “The image file of claim 1 wherein the digital image file includes user identifiers for a plurality of particular users [see Shepard, para. 0087, multiple users] and a like plurality of quantitative values, where each quantitative value is an importance rating of the digital image for the associated particular user” supra for claim 1.

Wherein [identified users] and users that identify with [demographic, psychographic and technographic trends] correspond to a plurality of particular users. Wherein [meaningful proposition] corresponds to “importance”, which communicates via [vocabulary of cues (visual, auditory, olfactory, taste, tactile and experiential)] such that [outputted particular visual representations are rated and processed to identify a ranking] corresponds to “importance rating of the digital image for the associated particular user”; wherein [classification information of the outputted particular visual representations 2338 is rated and the ratings are then processed to determine an average rating 2352 for each outputted visual representation] corresponds to “and a like plurality of quantitative values, where each quantitative value is an importance rating of the digital image for the associated particular user”.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to store still images, video clips, sound clips, virtual reality clips and the like in a database disclosed by Shepard in combination with database is a file disclosed by Microsoft dictionary, and motivated to combine the teachings because they are related fields of endeavor.

C. Shepard and Microsoft Dictionary disclose claim 7, [as detailed], “A method for providing a retrieval scheme for stored digital images, wherein each digital image is stored using a digital image file that corresponds to the image file of claim 6 [supra for claim 6], comprising the steps of:

- a) a retrieval user providing a user identifier;
- b) using the user identifier provided by the retrieval user to select, from the plurality of affective information, the particular affective information associated with the retrieval user; and
- c) using the affective information to facilitate image retrieval”

[Shepard, (para. 0067) The positioning system's 118 database provides several advantages. First, the database can infer information from one set of sensory stimuli representations by cross-referencing its content with the content and information of other sets of sensory stimuli representations stored in the database. The ability to make inferences allows positioning system 118 to select the categories and the sensory stimuli representations for a spectrum of a specific project. For example, if a project is to develop the perception of being "fun and exciting," positioning system 118 can probe into its database and retrieve sensory stimuli representations that have already been categorized as being "fun and exciting." Then, the retrieved sensory stimuli representations may be output or presented to users for obtaining their responses regarding which of the retrieved sensory stimuli representations they most closely associate with being "fun and exciting." The retrieved sensory stimuli representations may be output together (e.g., as a spectrum or ranking) or may be output separately.]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to store still images, video clips, sound clips, virtual reality clips and the like in a database disclosed by Shepard in combination with database is a file disclosed by Microsoft dictionary, and motivated to combine the teachings because they are related fields of endeavor.

D. Shepard and Microsoft Dictionary disclose claim 9, "The method of claim 7 wherein the affective information is used to determine the order of presentation of retrieved images [Shepard, (para. 0079) FIG. 6 illustrates a display provided by positioning system 118 for categorizing and ranking sensory stimuli representations. A user is able to place a sensory stimulus representation in a block below the dimension and its opposite by moving (e.g., dragging) the sensory stimulus representation with a pointing device such as a mouse or touch panel display. The user places

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the sensory stimuli representations in an order 1500 that ranks them from being most representative of an image or perception of being "remote and insincere" to being most representative of an image or perception of being "genuine and approachable."

[0080] In one embodiment of the invention, positioning system 118 outputs to the users several sensory stimuli representations and queries the users to sort the sensory stimuli representations or place them in a linear order (e.g., a sequential ranking). The sensory stimuli representations within the spectrum may be small in size. For some sensory stimuli representations, in which there are many details, this technique may not be useful, as the details may be lost due to the size of the sensory stimuli representations on an output device (e.g., a very small visual image displayed on a monitor). In contrast, with some simple types of sensory stimuli representations, this technique allows users to view all related sensory stimuli representations at once, thus making ranking the sensory stimuli representations easier for the user.]” supra for claim 7 and [as detailed].

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to store still images, video clips, sound clips, virtual reality clips and the like in a database disclosed by Shepard in combination with database is a file disclosed by Microsoft dictionary, and motivated to combine the teachings because they are related fields of endeavor.

E. Shepard and Microsoft Dictionary disclose claim 10, “The image tile of claim 1 wherein the importance rating is provided by monitoring the facial expression of the user [Shepard, (0060) For example, as discussed above, the sensory stimuli representations and responses may be stored as visual, auditory, olfactory, taste, tactile, experiential, virtual reality and the like, in the form of digital data populating the database. Furthermore, users' responses may be input

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from a conventional keyboard or mouse, or in the form of speech, iris scanning, fingerprint scanning and other biometrics data such as sensory, biological or biometrics responses from a user as provided by various input devices that are generally well-known in the art.]” supra for claim 1, and [as detailed].

Wherein [other biometrics data such as sensory, biological or biometrics responses from a user] corresponds to “facial expression of the user”.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to store still images, video clips, sound clips, virtual reality clips and the like in a database disclosed by Shepard in combination with database is a file disclosed by Microsoft dictionary, and motivated to combine the teachings because they are related fields of endeavor.

F. Shepard and Microsoft Dictionary disclose claim 11, “The image file of claim 1 wherein the importance rating is provided by monitoring the physiology of the user [Furthermore, users' responses may be input from a conventional keyboard or mouse, or in the form of speech, iris scanning, fingerprint scanning and other biometrics data such as sensory, biological or biometrics responses from a user as provided by various input devices that are generally well-known in the art.]” supra for claim 1, and [as detailed].

Wherein [speech, iris scanning, fingerprint scanning and other biometrics data such as sensory, biological or biometrics responses from a user] also corresponds to “physiology of the user”.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to store still images, video clips, sound clips, virtual reality clips and the like

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in a database disclosed by Shepard in combination with database is a file disclosed by Microsoft dictionary, and motivated to combine the teachings because they are related fields of endeavor.

G. Shepard and Microsoft Dictionary disclose claim 12, "The image file of claim 1 wherein the importance rating is provided by a user interface which enables the user to indicate important images [Shepard, (para. 00430) at: It is envisioned that attached to the computer system 100 may be interfaced with other devices, such as read-only memory (ROM), video card, bus interface, speakers, printers, speech recognition and synthesis devices, virtual reality devices, devices capable of converting a digital stream of bits into olfactory stimuli, taste stimuli, tactile stimuli or any other device adapted and configured to interface with the computer system 100 that is capable of providing an output from the computer system of sensory stimuli representations and capable of converting sensory information into a digital format that is recognizable by the computer system 100 and the like.

(para. 0044) at: An example of a company that is developing a technology that allows people to interface with computers using sensory information is NCR CORPORATION.RTM..

NCR.RTM. has developed a prototype allowing Automatic Transaction Machine (ATM) users to transact business with an automatic computerized bank teller machine using biometrics information such as speech recognition and synthesis, iris recognition or retinal scanning technology. These machines may use pressure-sensitive input devices, a keypad touch screen and fingerprint scanning devices, which are well-known to those skilled in the art.]” supra for claim 1, and [as detailed].

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to store still images, video clips, sound clips, virtual reality clips and the like

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in a database disclosed by Shepard in combination with database is a file disclosed by Microsoft dictionary, and motivated to combine the teachings because they are related fields of endeavor.

H. Shepard and Microsoft Dictionary disclose claim 27, "The image file of claim 1 wherein the quantitative value is one number selected from a range of possible numbers [Shepard, (para. 0087) As multiple users are separately placing sensory stimuli representations on the perceptual maps 1900, positioning system 118 can take their placement as input to develop a perceptual map 1900 with a calculated "average" placement. This may be done; for example, by averaging the x and y coordinates for each sensory stimulus representation on each perceptual map 1900. For example, the dimensions "genuine and approachable" and "dynamic" may be tested with eight focus groups each completing a perceptual map for those dimensions. Positioning system 118 will calculate the average placement of the sensory stimuli representations from all of the focus groups.]" supra for claim 1, and [as detailed].

Wherein "average" corresponds to "one number selected from a range of possible numbers".

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to store still images, video clips, sound clips, virtual reality clips and the like in a database disclosed by Shepard in combination with database is a file disclosed by Microsoft dictionary, and motivated to combine the teachings because they are related fields of endeavor.

J. Per independent claim 29, this is directed to a collection of image files for the image file of independent claim 1, and therefore is rejected to independent claim 1, wherein [database] corresponds to "a collection of image files wherein each stores a different digital image and information related to such digital images".



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K. Per independent claim 37, this is directed to a storage device for storing the image file of independent claim 1, and therefore is rejected to independent claim 1.

Examiner's note: This may be as simple as a container box holding a set of old style keypunched IBM cards that have been keypunched to perform claim 1.

8. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard as applied to claim 1 above, further in view of Microsoft Dictionary, and further in view of Boyle et al., (US 2001/0041021 A1), hereinafter Boyle.

A. Shepard and Microsoft Dictionary disclose claim 2, "The image file of claim 1 wherein the affective information further specifies the time or period within a range of times that the affective information was produced" supra for claim 1.

However, Shepard and Microsoft Dictionary do not appear to disclose "wherein the affective information further specifies the time or period within a range of times that the affective information was produced", but Boyle does in [(para. 0039) at: Next, in step 720, the imaging conduit 310 preferably converts the image data into a JPEG format. In step 722, the imaging conduit 310 converts the JPEG image into an RGB format before storing the JPEG image in the appropriate folder based on the category of the image. The JPEG image is stored as a file of the name created by the user upon image capture, or by the default name of the date/time stamp.]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with date/time stamp disclosed by Boyle, and motivated to combine the teachings because it would

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provide a need for a fast and user-friendly conduit for use between a handheld electronic device and a remote storage device to transfer images and other such data and a method for transferring and synchronizing the same as revealed in [para. 0008].

B. Shepard and Microsoft Dictionary disclose claim 5, “The image file of claim 1 wherein the image data is a JPEG compressed image data” supra for claim 1.

However, Shepard and Microsoft Dictionary do not appear to disclose “wherein the image data is a JPEG compressed image data”, but Boyle does in [(para. 0039) at: Next, in step 720, the imaging conduit 310 preferably converts the image data into a JPEG format. In step 722, the imaging conduit 310 converts the JPEG image into an RGB format before storing the JPEG image in the appropriate folder based on the category of the image. The JPEG image is stored as a file of the name created by the user upon image capture, or by the default name of the date/time stamp.]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with date/time stamp disclosed by Boyle, and motivated to combine the teachings because it would provide a need for a fast and user-friendly conduit for use between a handheld electronic device and a remote storage device to transfer images and other such data and a method for transferring and synchronizing the same as revealed in [para. 0008].

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard as applied to claim 1 above, further in view of Microsoft Dictionary, and further in view of Szajewski et al., (US 6,222,607 B1), hereinafter Szajewski.

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A. Shepard discloses claim 4, “The image file of claim 1 wherein the image file further includes information related to the capture device used to capture the digital image” supra for claim 1.

However, Shepard does not appear to disclose “wherein the image file further includes information related to the capture device used to capture the digital image”, but Szajewski does in [col. 3, lns. 39-44 at ‘The present invention further relates to a processing method which comprises the steps of: reading an electronic image bearing file to obtain a digital record of images from the file; identifying an image capture device type of the file; and providing information regarding the image capture device type of the file to a controller.’]

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with capture device type disclosed by Szajewski, and motivated to combine the teachings because it would provide for obtaining a digital record of images from an electronic image bearing file supplied to the processing system; an image capture device type identifier which identifies an image capture device type of the file as revealed in [col. 3, lns. 26-31].

10. Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard as applied to claim 1 above, further in view of Microsoft Dictionary, and further in view of Engeldrum et al., (US 6,847,376 B2), hereinafter Engeldrum.

A. Shepard and Microsoft Dictionary disclose claim 30, “The image file of claim 1 wherein the image file is a JPEG2000 image file”. However they do not appear to disclose “wherein the image file is a JPEG2000 image file”, but Engeldrum does in [col. 3, lns. 48-52].

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with database as a file disclosed by Microsoft Dictionary and further coupled with JPEG 2000 format disclosed by Engeldrum, and motivated to combine the teachings because it would provide that a 'user 12 may also include remote storage 26 and/or local storage 28 within electronic device 24. Remote storage 26 may also be available to electronic device 24 through network 13. User 12 may also include one or more output devices 30 which may be any type of printer, recorder or plotter. User 12 may also include one or more input devices 32 which may be any type of scanner, reader, image capture device or other data transfer device' as disclosed by Engeldrum in col. 3, lns. 18-30].

B. Shepard and Microsoft Dictionary disclose claim 31, "The image file of claim 1 wherein the image file is a TIFF image file". However they do not appear to disclose "wherein the image file is a TIFF image file", but Engeldrum does in [col. 3, lns. 48-52].

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with database as a file disclosed by Microsoft Dictionary and further coupled with TIFF format disclosed by Engeldrum, and motivated to combine the teachings because it would provide that a 'user 12 may also include remote storage 26 and/or local storage 28 within electronic device 24. Remote storage 26 may also be available to electronic device 24 through network 13. User 12 may also include one or more output devices 30 which may be any type of printer, recorder or plotter. User 12 may also include one or more input devices 32 which may be any type of

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scanner, reader, image capture device or other data transfer device' as disclosed by Engeldrum in col. 3, lns. 18-30].

11. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard and Microsoft Dictionary as applied to claim 1, and further in view of Stokes et al., (US 2001/0033286 A1), hereinafter Stokes.

A. Shepard and Microsoft Dictionary disclose claim 30, "The image file of claim 1 wherein the image file is a EXIF image file". However they do not appear to disclose "wherein the image file is a JPEG2000 image file", but Stokes does in [para. 0057].

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with database as a file disclosed by Microsoft Dictionary and further coupled with EXIF format disclosed by Stokes, and motivated to combine the teachings because it would provide 'digital color image encoding schemes according to particular attribute (e.g., color) data encoding formats' as disclosed by Stokes in para. 0002].

12. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shepard, Microsoft Dictionary and Stokes as applied to claim 32, and further in view of Sandstrom et al., (US 5,619,571), hereinafter Sandstrom.

A. Shepard, Microsoft Dictionary and Stokes disclose claim 33, "The image file of claim 32 wherein the affective information is stored using TIFF IFD". However they do not appear to disclose "wherein the affective information is stored using TIFF IFD", but Stokes discloses that an 'ImageDescriptor is a private "sub" image file directory ("IFD") and follows most of the same rules as a general TIFF IFD' in col. 9, lns. 18-20].

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Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply image file storage disclosed by Shepard in combination with database as a file disclosed by Microsoft Dictionary and further coupled with EXIF format disclosed by Stokes, and motivated to combine the teachings because it would provide 'digital color image encoding schemes according to particular attribute (e.g., color) data encoding formats' as disclosed by Stokes in para. 0002], and further combined with same rules as a general TIFF IFD as disclosed by Sandstrom.

Although Sandstrom does not specifically state that "the affective information is stored using TIFF IFD", Sandstrom is sufficiently broad to indicate an Image Descriptor using "TIFF IFD" and thus corresponds to the image description not unlike the affective information associated (describing) with a digital image.

### ***Response to Arguments***

13. Applicant's arguments filed 11/30/2006 with respect to claims 1, 2, 4-7, 9-12, 27 and 29-36 have been fully considered but they are not persuasive.

Although the Applicant(s) respond with traverse to the 101 rejections, the 101 interim guidelines were intended to incorporate specific language into the claims as suggested via Examiner's note supra.

Rejections under 103 in view of Shepard and Microsoft Dictionary were reworded to indicate where in these references the corresponding claim language is found as detailed supra for each of said claims 1, 2, 4-7, 9-12, 27 and 29-36.

With respect to the argument that there is no teaching, motivation, or suggestion in Shepard for elements b) and c) of claim 1:

Shepard discloses an improved technique to assist a company in managing its perceptions in the marketplace by communicating meaningful proposition of its product (the importance of its products) to consumers; i.e. reliable and ownable. Furthermore, once an "ownable" position is obtained, there is a need to build a vocabulary of cues (visual, auditory, olfactory, taste, tactile and experiential) that can be used to accurately translate the chosen position at each point of contact with consumers. These correspond to an importance rating wherein a positioning system that provides a set of tools to evaluate the position that a company or brand wishes to own, such as "reliable," correspond to quantitative value of affective information – see scale in Fig. 4 showing quantitative values. Fig. 5 shows scaled from remote and insincere to genuine and approachable, while Fig. 7 shows a visual positioning system for processing information received from user.

Furthermore information collected from individuals regarding their ranking or perception of visual representations are stored in the same file as the visual representations. Shepard discloses in [(para. 0111) illustrates how the specific sensory stimuli representations being tested are imported into the file] corresponds to individual perception of visual representations are stored in the same image file as the visual representation. Furthermore Shepard indicates that the image and related information are stored in a database

With regard to Applicant's argument that Shepard has no motivation to include the collected information along with the visual representations in the same file and there is no need for Shepard to associate this information with the images themselves in the same image file;

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Shepard discloses in para. 00067 that if a project is to develop the perception of being "fun and exciting," positioning system 118 can probe into its database and retrieve sensory stimuli representations that have already been categorized as being "fun and exciting." Then, the retrieved sensory stimuli representations may be output or presented to users for obtaining their responses regarding which of the retrieved sensory stimuli representations they most closely associate with being "fun and exciting."

All other arguments for the remaining claims are based on the condition of Shepard's standing in teaching claim 1, whereby Shepard and/or Microsoft Dictionary have been shown to disclosed claim 1.

### *Conclusion*

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37.CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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*Responses*

15. Responses to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

*Inquiries*

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory F. Cunningham whose telephone number is (571) 272-7784.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Bella can be reached on (571) 272-7778. The Central FAX Number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**MATTHEW C. BELLA**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**



**Gregory F. Cunningham**  
**Examiner, Art Unit 2624**

gfc

2/5/2007